

**TOWN OF KITTERY, MAINE
BOARD OF APPEALS**

**APPROVED
August 11, 2015**

Members present: Brett Costa, Craig Wilson, Gary Beers, Niles Pinkham, Jeffery Brake, Brian Boyle
Staff: Robert Marchi, Code Enforcement Officer

Chairman Costa called the meeting to order at 7:04 p.m. **NOTE:** Due to Mr. Costa's voice condition, Board Secretary Mr. Wilson spoke for the Chair.

Town of Kittery Live Streaming Video for this meeting is found at:

http://www.townhallstreams.com/locations/kittery-maine/events/26113/council_chambers

The broadcast runs for 28 minutes.

1. Call to Order, Introductory, Roll Call

2. Pledge of Allegiance

3. Agenda Amendment and Adoption

The Chairman adopted the agenda as presented.

4. Executive session - NONE

5. Public Hearings:

NOTICE 1: Published in a local newspaper of general circulation on August 05, 2015.
Christopher Smith & Todd Bailey, 42 Bartlett Road, Residential-Rural R-RL, requesting
Miscellaneous Variation Request to the terms of Title 16.7.3.5.5.A, in order to construct a 2-
story, 16' x 36' addition, to include a 2-car garage, expanded living room & master suite, going
no closer to wetlands than existing.

Mr. Beers raised two Points of Order:

Is the location Map 56 Lot 11 in a Shoreland or Resource Protection Overlay zone?

Is the location in a floodplain?

Mr. Beers, referencing page 9 of the Turbat Memo, commented that a good portion of the property is showing in both the Resource Protection and floodplain zones. However, he noted that the structure is greater than 69ft from the associated wetlands and the floodplain Resource Protection zone. Referencing page 11 of the Turbat Memo, Mr. Beers stated that the structure is not within the Resource Protection Overlay zone. He concludes that the application in question is not within a Resource Protection nor a floodplain zone as demonstrated by the Town's Geographical Information System.

Mr. Wilson asked the Board if a motion would be necessary and, hearing no response, stated that the Board had unanimous concurrence and affirmed jurisdiction.

Mr. Wilson gave an example of a situation where a house was listed on a floodplain map but was, in fact, not in a floodplain area and commented on the unreliability of the map. Mr. Beers responded that he used all three maps, (the overlay map, the flood zone map, and the Town's Geographical Information System) to be sure. He stated that the structure was clearly located outside the zones on all three maps.

Mr. Wilson asked for clarification of when the public hearing notice was posted. Mr. Beers responded that the notice was published on Tuesday, August 5th in the Portsmouth Herald, seven days prior as required.

Applicant's Case First

At the Chairman's invitation, Mr. Smith indicated they would stand on their application, asking only if they would be able to answer questions, if appropriate. The Chairman responded that they would.

Public Testimony

The Chairman invited anyone in attendance to speak for, against, or about the appeal, in any way. No one came forward to offer testimony.

Code Enforcement Office

Mr. Marchi advised that there were no outstanding violations for this property.

Deliberations

Mr. Beers suggested that the lot is legally nonconforming. The Tax Assessor record shows that Mr. Smith has been the owner since 6/30/2006 and the application appears complete. He noted that the structure was built in 1960, according to Town records, which predates current zoning and meets current legal criteria to be nonconforming. Mr. Beers suggested that the burden of proof is substantial evidence, meaning that the proposed expansion is not more nonconforming than what presently exists. Mr. Beers did not find any other Chapter 3 zoning standards which are applicable and did find the application to meet the criteria of section 7.3.5.5 Nonconforming Structure Repair criteria and, in his opinion, the result would not be more nonconforming. Mr. Beers also did not find any issues in section 16.6.6.1 or 16.6.6.2 and saw no issues related to conditions of approval.

Mr. Wilson asked the Board if anyone else would like to add anything or had any questions.

Mr. Wilson, referring to page 2 of the application, commented that the setbacks required for the front yard, side yard and rear yard are all 100. He added that he believes that the front yard requirement is 40, the side yards are 20 and the rear yard is 20. Mr. Beers commented that if there is 69 feet or more in each direction to a wetland then that is more than adequate to satisfy the yard requirements.

Mr. Wilson asked if, on maximum building coverage, the 1,765 is the actual building coverage. Mr. Beers commented that he interpreted the 1,765 to be total square footage of coverage with the existing at 935 sq. ft. and the proposed at 830 sq. ft. Mr. Wilson added that the lot size is 76,230 sq. ft. so the proposed coverage appears to be well under 20%, which is the maximum. Mr. Beers commented that it would be between 6% and 7%.

Mr. Beers moved to grant the Miscellaneous Variation Request to Christopher Smith & Todd Bailey in order to construct a 2-story, 16' x 36' addition, to include a 2-car garage, expanded living room & master suite, going no closer to wetlands than existing at 42 Bartlett Road, Map 56 - Lot 11 in the Residential-Rural (R-RL) zone. No conditions of approval are established.

Mr. Wilson seconded. Ayes: 6 Nays: 0 Abstain: 0 Motion carried.

The Chairman noted that the approval is not the granting of a building/regulated activity permit, and any aggrieved party may appeal this decision to Superior Court within 45 days. He requested and Mr. Smith acknowledged by signing the request document.

FINDINGS OF FACT:

The Board deliberated and found the following:

The Board does have jurisdiction to hear this matter and the hearing was held timely.

The Standard of Review was determined to require substantial evidence.

There are no outstanding violations on the property as attested by the Code Enforcement Officer.

The application is complete and the applicant does have standing.

Public notice was made timely.

The applicant's Burden of Proof was clarified.

The structure at Map 56 Lot 11 is not in a Shoreland or a Resource Protection Overlay zone.

The structure at Map 56 Lot 11 is not in a floodplain.

The Board did not need to consider floodplain related factors.

Christopher Smith, applicant, is the owner of the premises at 42 Bartlett Road, Map 56 Lot 11.

The structure there was built in 1960 and with the lot predates present zoning ordinances and are legally nonconforming.

The applicant applied for a Miscellaneous Variation Request, dated 7/27/15, under Town Code Title 16, Chapter 16.7, Article III, Nonconformance, Section 7.3.5.5A, seeking to construct a 2-story, 16' x 36' addition, to include a 2-car garage, expanded living room & master suite, going no closer to wetlands than existing at 42 Bartlett Road, Map 56 - Lot 11 in the Residential-Rural (R-RL) zone.

Applicants presented signed letters from the owners of abutting properties, as defined in Title 16, Section 16.2.2, Definitions, at 35 Bartlett Road (Map 56-13-1); 44 Bartlett Road (Map 56-12); 51 Miller Road (Map 56-14); and, 1 Charles Hill Road (Map 56-10); expressing no reason to be concerned and recommended the request for them with regards to the variance.

[NOTE: The word variance as used here and in the applicant's submitted letters refer to the formal Miscellaneous Variation Request applied for by applicants.]

The proposal does meet Section 7.3.5.5A Nonconforming Structure Repair / Expansion criteria.

No other Chapter 3 zone standards are applicable.

The result of this proposal would not be more nonconforming.

Factors or Considerations (Title 16, Sections 6.6.1 & 6.6.2) do not raise concern.

The applicant's evidence presented for the matter: was substantial; was credible; is not outweighed by conflicting evidence from the Town; and, the applicant did meet the burden of proof for granting the request.

There was no public comment for, against, or about the application.

The proposed structure meets the setback requirements.

The building coverage of the proposed structure would not exceed 20% of the lot size.

Mr. Beers moved to accept the Findings of Fact.

Mr. Pinkham seconded. Ayes: 6 Nays: 0 Abstain: 0 Motion carried.

CONCLUSIONS OF LAW:

The Board determined the following ordinance provisions link the specific statements covered in the findings of fact to the performance standards/review criteria which the applicant was required to meet in order to receive the Board's approval:

The Board of Appeals has the authority to grant a Miscellaneous Variation Request, under Town Code Title 16, Section 1.5.2F4a, pursuant to Sections 6.4.3A, Miscellaneous Variation Request; 7.3.5.5A, Nonconforming Structure Repair and/or Expansion.

Mr. Costa moved to accept the Conclusions of Law.

Mr. Brake seconded. Ayes: 6 Nays: 0 Abstain: 0 Motion carried.

6. Unfinished Business: – NONE

7. New Business – NONE

8. Acceptance of Previous Minutes:

The minutes of July 28, 2015 were accepted as amended.

9. Board Member or CEO Issues or Comment

The Chairman queried the CEO if there was any hearings scheduled for the August 25th meeting. Mr. Marchi commented that he does not believe that anything is scheduled but he would double check and email the Chairman.

10. Adjournment

Mr. Beers moved to adjourn. Seconded by Mr. Costa. Motion carried unanimously.

The Board of Appeals meeting of August 11, 2015 adjourned at 7:32 p.m.

LEGAL NOTICE OF PUBLIC HEARING - PORTSMOUTH HERALD 08/05/15

TOWN OF KITTERY - BOARD OF APPEALS 200 Rogers Road, Kittery, Maine 03904 Tuesday, August 11, 2015 - 7:00 p.m. Christopher Smith & Todd Bailey, 42 Bartlett Road, Residential-Rural R-RL, requesting Miscellaneous Variation Request to the terms of Title 16.7.3.5.5.A, in order to construct a 2-story, 16' x 36' addition, to include a 2-car garage, expanded living room & master suite, going no closer to wetlands than existing. Application information is available for public inspection between 8:00 am to 6:00 pm, Monday thru Thursday, at the Town Planning, Code, and Development Department located in Kittery Town Hall. To request a reasonable accommodation for this meeting please contact staff.